

1 J. Vaughn
 2 firms. No one has ever made the
 3 argument, you have a customer
 4 agreement that says you only -- that
 5 says something different. But with
 6 respect to the issue of class
 7 actions, this is the first time I
 8 ever heard the argument being made.
 9 And the reason -- and I don't
 10 understand why it is being made
 11 because the parties agreed to
 12 arbitrate pursuant to rules. And
 13 those rules mean class actions are
 14 in court. And in fact certain
 15 discriminations at the option of the
 16 employee under most circumstances
 17 are also in the court by the way.
 18 The U-4, which I know the
 19 panel is familiar with has standard
 20 form language that says the employee
 21 agrees to bring all actions arising
 22 out of that employment to
 23 arbitration, but also in the rules
 24 but not in the U4 was a change some
 25 years ago to the NASD and the New

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 2 York State Stock Exchange rules that
 3 said: If you have a sex
 4 discrimination lawsuit, race
 5 discrimination lawsuit, you may
 6 choose to bring that in court. So
 7 it is the same thing here. Class
 8 actions, they can't be heard here.
 9 THE CHAIRMAN: The first
 10 question to Mr. Harper and Ms.
 11 Lewis: Is this like the customer
 12 case he is referring to?
 13 MR. HARPER: No, because if I
 14 buy a share of World Com, and then
 15 sue the officers and directors of
 16 World Com in a class action, I
 17 haven't signed any arbitration.
 18 MR. BORTNICK: I'm saying,
 19 for example, the World Com suit, as
 20 you understand it, that is one
 21 example they sued a lot of
 22 individuals but they also sued
 23 Credit Suisse, First Boston, where I
 24 believe Mr. Jack Krupman worked for
 25 bad research. You have brokerage

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1 J. Vaughn
 2 accounts at --
 3 THE CHAIRMAN: I assume that
 4 is what you are saying?
 5 MR. BORTNICK: Yes.
 6 MR. HARPER: He actually
 7 worked at Solomon Smith Barney.
 8 MR. BORTNICK: Yes, I'm
 9 sorry.
 10 MR. HARPER: And they were
 11 arbitrated because my firm
 12 represented Solomon Smith Barney in
 13 those arbitrations.
 14 What I heard Mr. Bortnick say,
 15 is that if he buys a share of stock
 16 he can't be a member of a 10B5 class
 17 action. When I buy a share of stock
 18 I don't sign an arbitration
 19 agreement. My understanding is that
 20 I assume he was referring to a suit
 21 against the broker.
 22 MR. BORTNICK: The customer.
 23 MR. HARPER: If it is a claim
 24 of say an unauthorized trade or if
 25 it is a claim that I was defrauded

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1 J. Vaughn
 2 by Mr. Grubman's analyst reports
 3 into acquiring excessive World Com
 4 stock, that's an arbitration.
 5 THE CHAIRMAN: And you are
 6 suggesting it's a possible class
 7 action?
 8 MR. BORTNICK: There are class
 9 actions and, in fact, now that you
 10 are saying it, it is a case I'm not
 11 involved in in my office -- there is
 12 a class action or was a class action
 13 against Solomon Smith Barney over
 14 World Com stock because our two
 15 firms have an issue as to whether
 16 one of our clients opted out of the
 17 suit because he wanted to go to
 18 arbitration or pursuing it in
 19 arbitration, and there is a question
 20 of whether he opted out of the
 21 lawsuit and is allowed to go to
 22 arbitration.
 23 And Mr. Harper was very
 24 careful, he did not say that a
 25 purchaser of a share of World Com

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1 J. Vaughn
 2 can't be a member of a class because
 3 again the broker -- what he said if
 4 it was an unauthorized trade or
 5 something like that in general, but
 6 he knows that there are, I don't
 7 know, thousands of people that
 8 bought World Com that was part of
 9 the lawsuit and the ultimate
 10 settlement of the World Com class
 11 action in which Solomon Smith Barney
 12 was a defendant, those are real
 13 class actions in court.
 14 THE CHAIRMAN: And were these
 15 suits in which the arbitration
 16 clause was raised as you can't sue
 17 us?
 18 MR. BORTNICK: I'm sure it
 19 was never raised, to tell you the
 20 truth.
 21 MS. LEWIS: If I may
 22 interject because there are cases
 23 there that are out there that we
 24 have cited to you that we discussed,
 25 where that circumstance has been
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1 J. Vaughn
 2 raised and there is a class action
 3 suit in addition with the securities
 4 fraud litigation and related claims
 5 were made regarding individuals who
 6 would either have a contract for
 7 services or professionals. And the
 8 court makes an analysis as to
 9 whether or not the claims fall
 10 within the arbitration clause and
 11 whether or not they are encompassed
 12 with the classic action.
 13 So what Mr. Bortnick has been
 14 dismissing as just so much legal
 15 gobbledegook that we've put before
 16 the arbitrators is very relevant
 17 here. In fact, Mr. Bortnick cited
 18 several cases in regarding the
 19 foreign currency tax shelters, but I
 20 personally was involved in
 21 representing lawyers. And the
 22 Second Circuit reverts to the denial
 23 of the motion to compel arbitration
 24 in that case, and it was sent back
 25 to the district court and the case
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1 J. Vaughn
 2 ultimately settled. So we don't know
 3 where it went. But the Second
 4 Circuit felt that the southern
 5 district judge who was hearing it
 6 was so in error for not considering
 7 the arbitration clauses that were
 8 contained in these other private
 9 agreements that they were reversed
 10 and sent it back for purposes of
 11 determining whether what, if
 12 anything, had to be arbitrated.
 13 Here we are in a different
 14 circumstance. We have not an
 15 employment contract, not a
 16 discrimination contract, not a
 17 securities contract. We have a
 18 commercial contract between two
 19 independently represented people
 20 which resolved the dispute and it is
 21 from that the claim that we are
 22 addressing is arising. And whether
 23 or not as we have argued, Mr.
 24 Vaughn's claim --
 25 THE CHAIRMAN: What is the
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1 J. Vaughn
 2 difference you are referring to?
 3 MS. LEWIS: Because Mr.
 4 Vaughn, as Mr. Harper was addressing
 5 in cross-examination, made certain
 6 promises an received payment for
 7 those promises. And one of the
 8 promises made was: I will arbitrate
 9 any claim or dispute and that is a
 10 promise between two parties without
 11 regard to anybody else and the court
 12 has --
 13 THE CHAIRMAN: How is that
 14 different from the customer
 15 agreement?
 16 MS. LEWIS: Because the
 17 customer agreements, first of all,
 18 have certain statutory requirements,
 19 and they have certain questions as
 20 to whether or not there is even true
 21 arm's length transaction. And here
 22 is your agreement take it or leave
 23 it. But even those cases I pointed
 24 out, and refer the panel to the
 25 Canon versus Gun Allen case. In
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1 J. Vaughn
2 that case the court said, well, yes
3 it is a securities fraud claim but
4 vis-a-vis the professional it has a
5 contract, we are going to look at
6 what should be arbitrated and we are
7 going to look at that first.
8 Because if we settle an arbitration
9 that is going to formulate what has
10 to be addressed, if anything has to
11 be addressed in class action.

12 Here, the court has determined
13 Mr. Vaughn's individual claim must
14 be arbitrated. So if we address
15 that or had we addressed that, had
16 it been brought in arbitration it
17 might have formulated whether or not
18 Mr. Vaughn's claim could ever be
19 included in a class action if his
20 individual claim is identical to
21 what he would claim as a class
22 action.

23 THE CHAIRMAN: Proceed.

24 MR. BORTNICK: Yes. The Gun
25 Allen case she refers to, and I'm

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1 J. Vaughn
2 not saying I agree with her
3 characterization of it, but the way
4 they characterized it in their
5 motion papers was that there was no
6 arbitration for claims that were
7 encompassed by a pending class
8 action.

9 In other words, claims that
10 are part of the class action go to
11 court and don't get arbitrated,
12 that's what their characterization
13 of the Gun Allen case is.

14 The case that Mr. Vaughn
15 brought, he is the one bringing the
16 class action claim so, of course,
17 the claim that he would otherwise
18 have, the so-called individual claim
19 is the class action claim, there is
20 no difference and it's just to think
21 of it any other way is just not only
22 flat-out wrong, but it is
23 nonsensical.

24 He has brought a claim, a
25 class action claim in court that

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1 J. Vaughn
2 fundamentally says that there was
3 something, that he called it a
4 secret in his testimony, between
5 Leeds & Morelli and Prudential
6 attorneys that he didn't know about
7 that affected the agreement. So he
8 brought a class action, and the
9 judge said, well, he could have
10 technically waived his right to
11 bring a class action at all
12 depending on what his intent or what
13 the intention of the parties were to
14 the agreement.

15 And that's why I keep coming
16 back to the intention of Jeffrey
17 Vaughn and the intention of
18 Prudential. And you only had the
19 testimony on one because that's what
20 if judge said. In the Gun Allen
21 case the way they characterize it on
22 page 10 of their I guess reply
23 brief, is not a particularly
24 remarkable point. You only, you
25 can't sweep into court things that

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1 J. Vaughn
2 are not part of the class action,
3 that's unremarkable.

4 MR. HARPER: I have something
5 else.

6 THE CHAIRMAN: Yes.

7 MR. HARPER: I think there
8 are lots of reasons why this panel
9 should hold Mr. Vaughn to his
10 promise, but I think one of the
11 things that, Mr. Chairman, I think
12 you are going to, is what is going
13 on between this and the typical
14 customer and/or the typical employee
15 claim.

16 And I think what Ms. Lewis has
17 been trying to say is because it is
18 neither, it is neither a customer
19 complaining about a trade nor is it
20 an employee complaining about racial
21 or sex discrimination or age
22 discrimination.

23 It is an employee complaining
24 about an arm's length agreement that
25 exchanged consideration, and had a

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1 J. Vaughn
2 dispute resolution clause that
3 happened to refer to the procedures
4 of the NASD, and which is shorthand
5 for no class action, which makes
6 perfect sense because there was no
7 class action to begin with, it was a
8 unique individualized claim that Mr.
9 Vaughn was settling.

10 And I can't emphasize enough,
11 how I'm standing here eight years
12 later having paid all the
13 consideration having lived up to my
14 part of the bargain in every respect
15 and I'm still arguing with somebody
16 who hasn't worked for me in nine
17 years who settled with me nine years
18 ago or eight years ago, or whatever
19 it is, and I'm still expending
20 resources trying to uphold an
21 agreement that has dust on it.

22 And I would respectfully
23 suggest that fairness occupies a
24 place or ought to occupy a place at
25 the table.

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1 J. Vaughn
2 the cases in New Jersey and the
3 cases all across the country you
4 signed an agreement, you are
5 dispositively presumed, irrefutably
6 presumed to have understood the
7 terms and conditions of that
8 contract.

9 And you cannot come in eight
10 years later and say: My lawyer
11 didn't tell me this. And to say it
12 to me, when I wasn't his lawyer and
13 when I had no right to communicate
14 with him.

15 This is not about knowing and
16 voluntary waiver because that
17 concept applies only to substantive
18 rights, and the Supreme Court, every
19 federal circuit, every federal
20 district court has held time and
21 time again that to agree to an
22 alternate dispute resolution process
23 is not to forego a substantive right
24 because the courts have faith in
25 these processes to vindicate those

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1 J. Vaughn
2 Mr. Bortnick can cite all the
3 rules he wants about the NASD, but
4 he can't address the simple facts
5 that the rules of the NASD
6 specifically allowed me to go into
7 court to compel arbitration against
8 a former employee. That is what the
9 rule says. The rule does not forbid
10 me to make a motion to compel
11 arbitration against a former
12 employee.

13 Mr. Vaughn was a former
14 employee when he signed the
15 agreement and when he got the check.
16 And he was a former employee when he
17 brought the class action. And so
18 the notion that we are here to
19 decide about the intention of the
20 parties when the intention of the
21 parties is set out in a contract
22 that Mr. Vaughn promised me he
23 understood and read at the time,
24 that the law presumes he understood
25 and read. The cases in New York and

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1 J. Vaughn
2 rights.

3 MR. BORTNICK: I want to
4 respond. It has been raised several
5 time here and and I want to address
6 this fairness issue. I'm standing
7 here eight years later having to
8 defend.

9 The flip answer to the other
10 side of that is the truth here at
11 least the claim in this case is if
12 we don't hold you to account for
13 what you did eight years ago, you
14 get away with doing something really
15 bad, and so that's why you are here.

16 THE CHAIRMAN: One at a time.
17 We don't want to rehear the
18 testimony.

19 MR. BORTNICK: Mr. Vaughn
20 said it came up in a question
21 several times during cross, what the
22 case is about and what the class
23 action complaint is about.

24 And so this whole idea of
25 fairness, The fairness is not to let

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1 J. Vaughn 2 an injustice be gone unaddressed. 3 And that's why the class action is 4 here because this is just like any 5 other class action, the amount -- 6 that is why it is a class action, 7 the amount, Mr. Vaughn has been 8 damaged either there's a legal 9 theory it has to do with the amount 10 of the -- I don't think we have to 11 go there. It is not about the 12 \$200,000, but the amount that he is 13 damaged is so small that it 14 doesn't -- 15 THE CHAIRMAN: We understand 16 the purpose of class actions. 17 MR. BORTNICK: Fine. 18 THE CHAIRMAN: Will each of 19 the parties state affirmatively 20 whether you had a full and fair 21 opportunity to be heard. 22 MR. BORTNICK: Yes. 23 MS. LEWIS: Yes. 24 MR. HARPER: Yes, 25 exhaustively, Mr. Chairman. [Page 174]	1 J. Vaughn 2 30thank you very much. 3 Thank you for your patience 4 and good spirit. 5 6 (Whereupon, at 1:30 P.M., the 7 arbitration was concluded.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 [Page 176]
1 J. Vaughn 2 THE CHAIRMAN: We will take 3 that for a yes. The decision will 4 be forwarded to the parties and/or 5 their counsel in order to expedite 6 the delivery of the panel's decision 7 to the parties, the panel may either 8 execute a handwritten copy of the 9 award or each arbitrator may execute 10 a counterpart copy of the award. 11 And ASD is not responsible for the 12 disposal of any documents left here. 13 So if you want to retain secure 14 control of them, you should take 15 them with you when you leave. 16 The record will remain open 17 until the panel arrives at a 18 decision or the panel determines 19 that it is closed. No party will 20 contact any member of the 21 arbitration panel directly. All 22 communications are to be directed to 23 the staff person assigned to this 24 case. We request that the parties 25 leave the room at the same time. [Page 175]	1 J. Vaughn 2 INDEX 3 4 WITNESS EXAMINATION BY PAGE 5 J.VAUGHN Mr. Bortnick 36, 121 6 Mr. Harper 54 7 Ms. Lewis 108 8 EXHIBITS 9 10 EXHIBITS DESCRIPTION PAGE 11 1 Opinion and order of Judge 12 Coate dated August 12, 2005 38 13 2 Transcript of the hearing in 14 front of Judge Coate dated 15 September 5, 2006 38 16 3 Settlement agreement between 17 Mr. Vaughn and Prudential 18 Securities, dated October 1998 38 19 RESPONDENTS' 20 1 Agreement 61 21 2 Five-Page document 72 22 23 24 25 [Page 177]

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CERTIFICATE

STATE OF NEW YORK)

) : ss.

COUNTY OF NEW YORK)

I, WILLIAM BYRNE, a Notary
Public within and for the State of New
York, do hereby certify that the within is
a true and accurate transcript of the
proceedings taken on April 23, 2007.

I further certify that I am not
related to any of the parties to this
action by blood or marriage and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 5th day of May,
2007.

WILLIAM BYRNE

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Exhibit U

NASD Dispute Resolution

www.nasd.com

Northeast Region

One Liberty Plaza • 165 Broadway • 27th Floor

New York NY • 10006-1400 • 212-858-4200 • Fax 301-527-4873



May 10, 2007

Gerard E. Harper, Esq.
Paul, Weiss, Rifkind, Wharton & Garrison
1285 Avenue of the Americas
New York, NY 10019-6064

Subject: NASD Dispute Resolution Arbitration Number 06-00534
Jeffrey S. Vaughn v. Leeds, Morelli & Brown, P.C., Leeds, Morelli & Brown, L.L.P.,
Prudential Securities, Inc., et al.

Dear Mr. Harper:

In accordance with NASD Rules, I enclose the decision reached by the arbitrators in the above-referenced matter.

Responsibility to Pay Monetary Award

Pursuant to NASD Rule,¹ the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrators.

Tracking Payment of Award

NASD Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons. The 30-day period ends on: June 11, 2007.

Written notification concerning award compliance or lack thereof must be directed to:

Jennifer Kozielski
NASD Dispute Resolution
One Liberty Plaza,
165 Broadway, 52nd Floor
New York, NY 10006
212-858-4481 (tel) 301-527-4761 (fax)

¹Customer Code Rule 12904
Industry Code Rule 13904
Old Code Rule 10330(h)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554, which is part of the NASD Manual.

Right to File Motion to Vacate Award

All awards are final and are not subject to review or appeal by the arbitration panel or by NASD Dispute Resolution. Any party wishing to challenge the award must make a motion to vacate the award in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. NASD Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. NASD Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name NASD as a party as provided in Rule 2130.

Questions Concerning Award

Please direct any questions regarding this award to me. The parties must not contact the arbitrators directly.

Forum Fees

Enclosed is an invoice that reflects the fees assessed and any outstanding balances. Fees are payable to NASD Dispute Resolution.

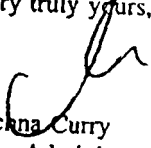
If a refund is due, it will be sent under separate cover. All refunds, even if payment is made by a non-party on behalf of a party, will be made payable to the party and will be sent in care of the party's representative.

Arbitration Evaluation

As a service organization, the primary goals of NASD Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and satisfying our commitment to you, we need to hear from you. If you have not already done so, please take the time to complete an evaluation of our services, the process, and the arbitrator(s) assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.nasd.com/arbevaluation>. If you do not have Internet access, or have difficulty completing the evaluation online, you may complete the paper version of the evaluation that was previously provided to you and mail it to the address indicated.

If you need another paper copy of the evaluation form, please contact the undersigned. Whenever possible, however, please use the new online version, as it will help us to review your feedback in a more expeditious and analytical manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,


Archana Curry
Case Administrator
212-858-4200 Fax: 301-527-4904

KA:CW1:LC09A
idr:4/07

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